Campbell v. *Seaboard Air Line Ry.*, 83 S. C. 448, 65 S. E. 628. The courts uniformly reason that for this purpose the Pullman employees are temporary servants of the railroad. See *Pennsylvania Co.* v. *Roy*, 102 U. S. 451, 457. This is, at best, a fiction. The true reason for the liability rests in the fact that the carrier's duty of proper conveyance is non-delegable. See *Dwinelle* v. *New York, etc. R. Co.*, 120 N. Y. 117, 123, 24 N. E. 319, 321; *Barrow S. S. Co.* v. *Kane*, 88 Fed. 197, 199. A breach of it, therefore, even though committed by the servant of an independent contractor, renders the railroad liable. Some make this duty not only non-delegable, but even absolute in respect of the wilful torts of employees. *Jackson* v. *Old Colony Street R. Co.*, 206 Mass. 477, 92 N. E. 725. See 6 LABATT, MASTER AND SERVANT, 2 ed., § 2447 ff. But obviously a non-passenger cannot invoke this extraordinary liability, since it rests upon the relationship of carrier to passenger. *Blake* v. *Kansas City Southern Ry. Co.*, 38 Tex. Civ. App. 337, 85 S. W. 430.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — FOREIGN DECREE AGAINST A NON-RESIDENT. — The plaintiff's wife had divorced a former husband in Nevada, the court there taking jurisdiction by the wife's residence and constructive service on the husband. The plaintiff now sues in New York to annul his marriage on the ground that his wife's previous divorce decree was void. *Held*, that the burden is on the plaintiff to establish that the husband in the former action was a resident of New York when the decree was rendered. *Kaufman* v. *Kaufman*, 160 N. Y. Supp. 19 (Sup. Ct.).

New York has long contended that divorce proceedings are *in personam*. See *Lynde* v. *Lynde*, 162 N. Y. 405, 412, 56 N. E. 979, 981. It has therefore refused to give effect to a foreign court's decree of divorce against a non-resident of the foreign state not personally served. *Winston* v. *Winston*, 165 N. Y. 553, 54 N. Y. Supp. 298. See 15 HARV. L. REV. 66. The Supreme Court, while considering such divorce binding in the foreign state, has held that New York's disregard of such decree was not a violation of the "full faith and credit" clause. *Haddock* v. *Haddock*, 201 U. S. 562. The majority of the states, however, deeming divorce to be an action *in rem*, hold, if one party be domiciled within the state the other, though non-resident, may be served constructively. *Loker* v. *Gerald*, 157 Mass. 42, 31 N. E. 709; *In re James Estate*, 99 Cal. 374, 33 Pac. 1122; *Dunham* v. *Dunham*, 162 Ill. 589, 44 N. E. 841. Some of the New York courts have made an attempt by subtle distinctions to more closely conform to these decisions. *North* v. *North*, 47 Misc. 180, 93 N. Y. Supp. 512, affirmed 111 App. Div. 921, criticised, *Catlin* v. *Catlin*, 69 Misc. 191, 193, 126 N. Y. Supp. 350, 351. And it must be obvious that even the New York decisions, requiring, as they do, domicile of the libellant to create jurisdiction, cannot consider divorce as *in personam* in the true sense of the word. See J. H. Beale, Jr., "Constitutional Protection of Decrees of Divorce," 19 HARV. L. REV. 586, 590. Indeed, the principal case, by giving extraterritorial effect to a decree of divorce rendered against a non-resident defendant served by publication, unless such defendant be a resident of New York, seems to be an acknowledgment of that fact. Certainly any decision which tends to bring the New York law on this subject into conformity with that of the majority of states, must be desirable. But it is difficult to see on what principle the present decisions of the New York courts can possibly be based. But see *Percival* v. *Percival*, 106 App. Div. 111, 118, 94 N. Y. Supp. 909, 913.

CONSTITUTIONAL LAW — POWERS OF LEGISLATURE: TAXATION — CONSTITUTIONALITY OF AN INCOME TAX ON A CORPORATION ENGAGED IN EXPORT TRADE. — The plaintiff corporation seeks to recover the tax levied by the Federal Government on that part of its income derived from export trade, asserting the levy to be unconstitutional as a tax on exports. *Held*, that the tax

is not unconstitutional. *Peck & Co.* v. *Lowe*, 55 N. Y. L. J. 981 (Dist. Ct., S. Dist. N. Y.).

For discussion of this case, see NOTES, p. 77.

CONTRACTS — CONTRACTS IMPLIED IN FACT — CONSTRUCTION OF CONTRACTS — MOVING PICTURE RIGHTS AS PART OF RIGHTS OF DRAMATIZATION. — Plaintiffs, who own the copyright of a dramatization of "Ben Hur," in 1899 granted defendants the sole right of "producing on the stage" or "performing" the play. Royalties were to be computed in a manner wholly inapplicable to any method of producing moving pictures. Defendants have recently threatened to make a photoplay based on the dramatization. Plaintiffs bring a bill in equity to restrain them, and defendants, in turn, counterclaim, asking that the plaintiffs be enjoined from making such a photoplay. *Held*, that both injunctions should be granted. *Harper Bros.* v. *Klaw*, 232 Fed. 609 (Dist. Ct., S. Dist., N. Y.).

A general grant of dramatization rights has been held to include the right to make moving pictures. *Frohman* v. *Fitch*, 164 App. Div. 231, 149 N. Y. Supp. 633. But in the principal case the court finds that owing to the agreed method of computing royalties, the grant includes only the right to produce the play on the legitimate stage. It, however, enjoins the plaintiff from using the moving picture rights thus found to be in him, on the ground of a negative covenant implied in the contract. If such covenant exists, it obviously cannot be directly aimed at moving picture production, since the art was in its infancy and hardly in the minds of the parties at the time they made the contract. The implied negative covenant referred to must therefore be a general one, to do nothing detrimental to the value of the dramatization rights granted. But even in the sale of the good will of a business, most courts will allow the vendor to set up a rival establishment, and simply limit him from soliciting the customers of the old business. See 24 HARV. L. REV. 311. Yet it is certainly easier to imply a general negative covenant from a sale of "good will" than from a sale of the sole dramatic rights. Cf. *Cescinsky* v. *Routledge & Sons*, [1916] 2 K. B. 325, 328.

CORPORATIONS — CITIZENSHIP AND DOMICILE OF CORPORATIONS — ENEMY CHARACTER: DOMESTIC CORPORATION WITH ALIEN ENEMY SHAREHOLDERS AND DIRECTORS. — An English company, all but one of whose shareholders and all of whose directors were German subjects resident in Germany, brought suit in England on an admitted debt. Defenses were that the agent who authorized the suit had no authority to do so, and that payment to such a company would be illegal as trading with the enemy. *Held*, for the defendant on the ground first stated. On the second point the Lords were in dispute. *Daimler* v. *Continental Tyre and Rubber Co.*, [1916] 2 A. C. 307 (House of Lords).

It is certain that a corporation takes no character simply from the nationality of its shareholders. *Hastings* v. *Anacortes Packing Co.*, 29 Wash. 224, 69 Pac. 776; *Queen* v. *Arnaud*, 16 L. J. Q. B. (N. S.) 50; *Amorduct Mfg. Co.* v. *Defries & Co.*, 31 T. L. R. 69. The case is therefore one of those that tempt a court to look through corporate entity to the incorporators. Our feeling toward such cases will depend on our belief or lack of it in the objective reality of the corporate identity. *Cf.* MORAWETZ, CORPORATIONS, 2 ed., § 227 *seq.*, with Laski, "The Personality of Associations," 29 HARV. L. REV. 404. One statement on which lawyers should agree is that the corporate entity should not be disregarded if the result sought can be reached on any other ground. See 20 HARV. L. REV. 223. In the principal case there was no danger that any sums paid to the corporation would reach the German shareholders until after the termination of the war. See *Continental Tyre and Rubber Co.* v. *Daimler Co.*, [1915] 1 K. B. 893, 905; 28 HARV. L. REV. 629. The injury of enemies after the